

Fawcett, Susan

From: Dean Hinnen [deanhinnen@yahoo.com]
Sent: Sunday, July 27, 2008 11:06 AM
To: Fawcett, Susan
Subject: New USPTO Rules on Appellate Briefs

Thank you for this opportunity to discuss the proposed new rules for appellate briefs. I am commenting as a private citizen, but my job gives me a better perspective than most.

I am the Intellectual Property Administrator for a large corporation. We file over 100 patent applications per year in the USPTO through our counsel. All of our patent filings worldwide cost millions of dollars per year in attorney fees. One of my responsibilities is to help hold these costs down.

The USPTO has drastically underestimated the amount of time it will take patent counsel to file an appellate brief under the new rules. The estimate is 30 hours. The fact of the matter is that 30 hours may be required just to satisfy the new formal requirements that have been added under the new rules. Good patent attorneys charge hundreds of dollars per hour.

Now please consider these facts in conjunction with a few other facts.

I couldn't help noticing in recent years that USPTO examiners have been raising frivolous objections with greater and greater frequency. This results in longer examinations and more fees. Inevitably, it results in more and more appeals being filed. Eventually, we prevail and like an innocent man who has been bankrupted by his defense attorney in a criminal trial, we sometimes hear this being described in glowing terms: "See? The system works." But increased costs must invariably be passed on to the consumer. We've been cutting costs since the Carter Administration, and we can't cut any more.

It can be argued that since our competitors suffer from the same frivolous objections and would suffer from the same increased appellate costs, the playing field remains level. But that doesn't take into account our foreign competition.

Consider that the European Patent Office (EPO) has streamlined its procedures, and added a few shortcuts and a few new members, essentially making it less expensive to obtain patents in Europe. And of course, in the Far East there are counterfeiting and reverse engineering operations spreading like a Southern California brushfire — supported by labor forces that make a nickel an hour, and engineers exquisitely trained at American, European and Japanese universities.

The cumulative result of all these factors is that during a difficult period in America's economic history, American industry is being made less competitive by these frivolous examiners' objections, and by these increased appeal costs. We must remain competitive in the world marketplace.

I am also concerned about individual inventors who attempt to patent their inventions. When my employer finances the development of a wonderful new invention that improves safety and could save a lot of lives, we have the option of shoveling more money at the problem when we encounter resistance from the USPTO. Individual inventors don't have this option.

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Hewlett-Packard got started in a garage, and there are a lot of other great companies that started on a shoestring with a single brilliant invention. Are those days gone? I sometimes wonder how the great inventors of the past, such as Edison, Tesla and Marconi, would have fared in today's regulatory climate.

There are two ways for an American manufacturing company to remain competitive. The first is to price our products lower than the Far East manufacturers who pay their workers a nickel an hour. The second is to build something they can't build, because we've invented it and patented it. Patented new inventions are therefore the lifeblood of American industry.

This subject is not sexy, nothing blew up and nobody died. The network news anchors will pay no attention. But millions of jobs are at risk, and they're not burger flipping jobs either. These are solid, middle-class manufacturing jobs and upper-class management jobs.

I urge the Office of Management and Budget, and President Bush, to take the necessary steps and stop these new rules from taking effect. American industry is the finest in the world, but we cannot compete effectively when we are handicapped by these additional costs.

Best regards
Dean Hinnen



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